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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No. 73-1104

THE HOOPA VALLEY TRIBE,

Petitioner,

v.

JESSIE SHORT, ET AL., and THE UNITED STATES,

Respondents.

MOTION OF SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY OF THE SALT RIVER INDIAN RESERVATION, ARIZONA, FOR LEAVE TO FILE STATEMENT AMICUS IN SUPPORT OF PETITION OF HOOPA VALLEY TRIBE OF INDANS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS AND STATEMENT OF SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY IN SUPPORT OF PETITION OF HOOPA VALLEY TRIBE OF INDIANS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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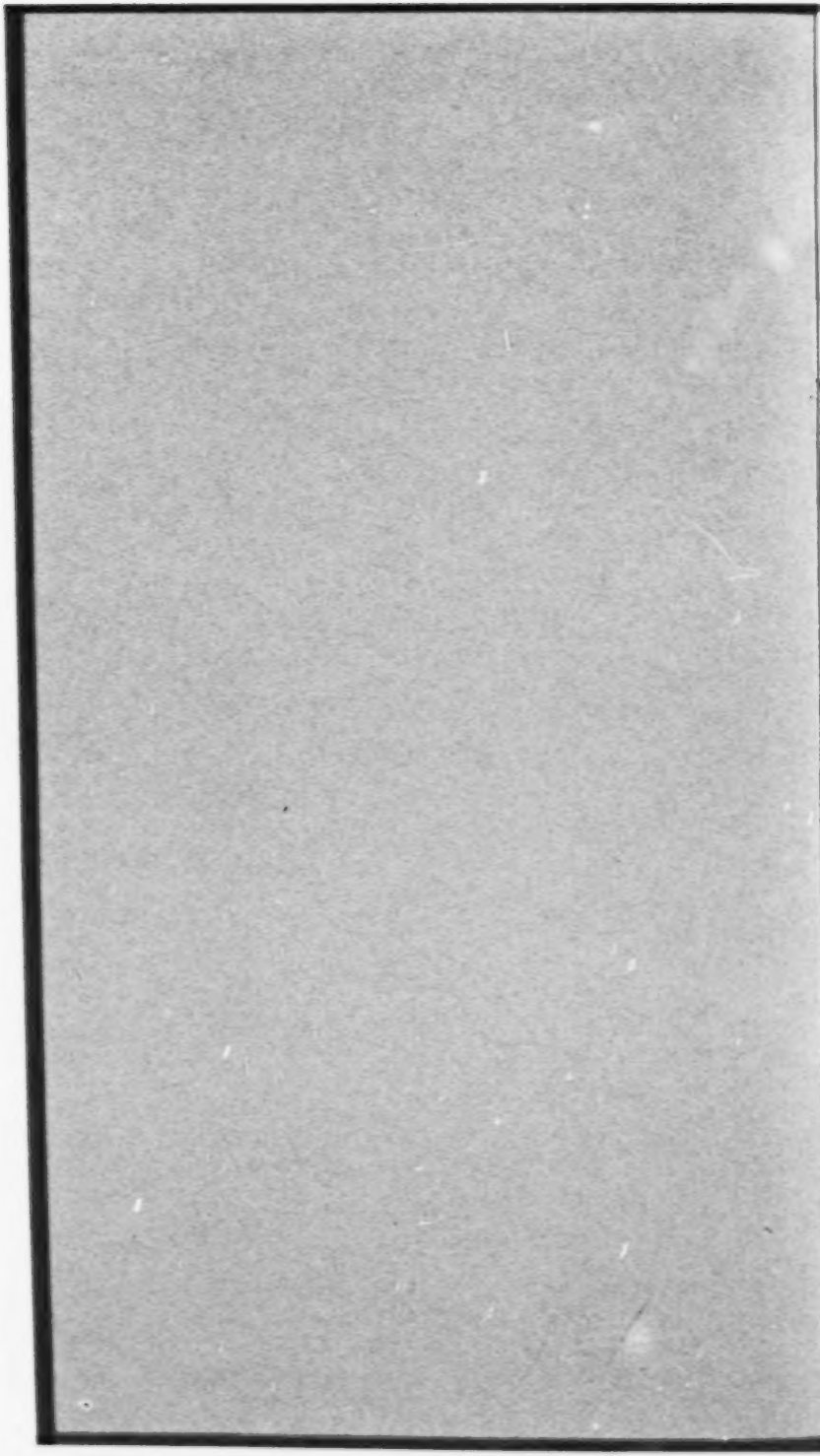
January, 1974



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The Salt River Pima-Maricopa Indian Community of the Salt River Indian Reservation, Arizona, respectfully moves for leave to file, as *amicus,* the accompanying statement in support of the petition of the Hoopa Valley Tribe for a writ of certiorari to the United States Court of Claims for review of *Short* v. *United States,* No. 102-63 (Oct. 17, 1973).

In support of this motion, your *amicus* states that the decision below may divest the members of the Salt River Pima-Maricopa Indian Community of exclusive right, title and interest in the property and resources of the Salt River Indian Reservation, by

precipitating a flood of unjust and ill-founded claims upon the property of that reservation by neighboring, off-reservation, or other landless Indians; and that the assumption of power by the Court of Claims to determine membership or enrollment in a tribal entity for purposes of distributing the assets of a reservation is contrary to established law and detrimental to the best interest of the entire American Indian community.

For purposes of resolving these issues which profoundly affect this government's administration of Indian affairs, and in the interests of justice, *amicus* urges this Court to grant this motion and the petition of the Hoopa Valley Tribe of Indians for a writ of certiorari.

Respectfully submitted,

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January, 1974

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STATEMENT OF SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY IN SUPPORT OF PETITION OF HOOPA VALLEY TRIBE OF INDIANS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

I. STATEMENT OF INTEREST

Your *amicus*, the Salt River Pima-Maricopa Indian Community of the Salt River Indian Reservation, Arizona, is organized as a self-governing Indian tribe, recognized by the Secretary of the Interior.

The Salt River Indian Reservation is a large triangular tract of land, approximately 46,626 acres, located contiguously to the Phoenix urban area in the northeastern quadrant of Maricopa County, Arizona. The reservation was set aside, by Executive Order of June 14, 1879 (1 Kappler 806-07), amended by Executive Order of October 23, 1911 (3 Kappler 668), for the use

of the Pima and Maricopa Indians, "and such other Indians as the Secretary of the Interior may see fit to settle thereon . . . ." Additional lands were added to the reservation by Executive Order of October 20, 1910 (3 Kappler 670-71), and Executive Order of September 28, 1911 (3 Kappler 671). By Executive Order of March 22, 1911 (3 Kappler 671), the original Order creating the Salt River Indian Reservation was amended so as to make available the lands of said reservation for "such other Indians as the Secretary of the Interior may see fit to settle thereon," in addition to the "Pima and Maricopa Indians."

The people of the Salt River Indian Reservation are predominantly of Pima-Maricopa extraction and number approximately 1,800 persons. Through the Tribe's official governing body, the Salt River Pima-Maricopa Indian Community Tribal Council, and with the help of all resident Indians, the Salt River Pima-Maricopa Indians have lived a tranquil and productive life. However, that existence is now seriously threatened by the decision of the United States Court of Claims in *Short* v. *United States,* No. 102-63 (Oct. 17, 1973). That is to say, the decision in *Short* may encourage neighboring and other off-reservation Indians to pursue unjust and ill-founded claims for a proportionate share of the property and resources of the Salt River Indian Reservation, just as the Yurok Indians, in *Short,* are on the verge of successfully appropriating a majority share of the ancestral homelands of the Hoopa Indians. Hence, the *amicus,* Salt River Pima-Maricopa Indians support the Hoopa Indians in urging this Court to issue a writ of certiorari for review of the Court of Claims decision in *Short.*

II. THE DECISION OF THE COURT BELOW THREATENS THE PROPERTY RIGHTS OF NUMEROUS INDIAN TRIBES WHICH RESIDE ON EXECUTIVE ORDER RESERVATIONS.

The decision of the Court of Claims threatens to cloud title to all Indian reservations which, like the Hoopa Valley Reservation,

were established pursuant to Congressional or Executive enactments which did not clearly define the Indian tribes or individuals who were entitled to share in the resources of the named reservation. As stated previously, the Salt River Indian Reservation was created for the Pima and Maricopa Indians and such other Indians which the Secretary saw fit to settle thereon. Executive Order of October 23, 1911 (3 Kappler 668); Executive Order of March 22, 1911 (3 Kappler 671). *See also,* Northern Cheyenne Reserve, Montana, Executive Order of November 26, 1884 (1 Kappler 860), as amended by Executive Order of March 19, 1900 (1 Kappler 860-61); Fort Stanton Reserve, New Mexico, Executive Order of March 24, 1883 (1 Kappler 872-73); Mukleshoot Reserve, Washington, Executive Order of January 20, 1857 (1 Kappler 920), Executive Order of April 9, 1874 (1 Kappler 918-19). The precedent established in *Short* may initiate a destructive "land rush," comparable only to that which opened this country's western frontier more than a century age to white settlement. For it is reasonable to assume that the decision in *Short* will precipitate numerous claims upon the lands of existing reservations, in the same manner that the Yurok Indians advanced claims upon the resources of the Hoopa Indians' reservation. Indeed, the damage to an Indian whose aboriginal home is being unjustly exploited is equally devastating when the exploiter is a third or fourth generation off-reservation Indian, whose ties to the reservation are illusory, as when the interloper is non-Indian. Your *amicus* submits that in a case where an organized Indian tribe may lose the reservation which comprises its aboriginal homelands, as the result of an order of a lower court, the issue is abundantly appropriate for Supreme Court review.

III. THE DECISION OF THE COURT BELOW THREATENS TO DEPRIVE INDIAN TRIBES OF THE IMPORTANT FUNCTION OF DETERMINING TRIBAL ENROLLMENT ON AN INDIAN RESERVATION

Based upon the judicially recognized concept of tribal sovereignty, a desire to encourage self-determination and self-identity among American Indians, and a reverence for Indian culture and tradition, it has been previously held that the power to determine membership in a tribal entity, for purposes of tribal asset distribution, lies with the Indian tribe itself, with the approval of the Secretary of the Interior, or with the Congress. *Stephens* v. *Cherokee Nation,* 174 U.S. 445 (1899). *See Cherokee Nation* v. *Hitchcock,* 187 U.S. 294 (1902). Despite the Hoopa Tribe's extensive efforts at self-government, including the organization of a functional tribal government and the compilation of a tribal roll, which efforts were specifically approved by the Secretary of the Interior, the Court of Claims has installed itself as the sole arbiter of tribal membership qualifications, and has subjected the entire question of tribal enrollment on the Hoopa Valley Reservation to judicial experimentation. Such efforts encroach upon the sovereignty of the tribe, upon the preeminence of Congress, and upon the plenary discretion of the Executive, with respect to the conduct of Indian affairs.

CONCLUSION

Your *amicus* submits that the decision of the Court of Claims, in *Short* v. *United States,* No. 102-63 (Oct. 17, 1973), may seriously endanger the continued existence of a reservation system of Indian occupancy in the United States, and may irreparably erode the conception and practice of Indian tribal sovereignty. For these reasons, the important issues considered in *Short* should be finally resolved by the Supreme Court of the United States.

Respectfully submitted,

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

BRIEF OF AMICUS CURIAE, NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION, IN SUPPORT OF HOOPA VALLEY TRIBE OF INDIANS

EDWARD C. BOU
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

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MOTION OF NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

Comes now the National Tribal Chairmen's Association (the "Association") and respectfully moves for leave to file a brief *amicus curiae* in support of the Hoopa Valley Tribe of Indians.

The Association states, in support of this motion, that the decision of the court below threatens to terminate the reservation rights of many federally-recognized In-

dian tribes and is contrary to the best interests of all American Indians.

Respectfully submitted,

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Washington, D. C. 20006

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1104

THE HOOPA VALLEY TRIBE,
Petitioner,

v.

JESSIE SHORT, ET AL., and THE UNITED STATES,
Respondents.

BRIEF OF AMICUS CURIAE, NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION, IN SUPPORT OF HOOPA VALLEY TRIBE OF INDIANS

STATEMENT OF INTEREST

The National Tribal Chairmen's Association, of 1701 Pennsylvania Avenue, Washington, D.C., represents more than 150 elected or appointed chairmen of Indian reservations and federally recognized Indian tribes in the United States of America. The goals of the Association are to maintain Indian treaty or executive order rights, to preserve Indian culture and tradition, and to promote

social, educational, economic and political progress among our Indian people.

The Association strongly believes that the decision of the trial judge in *Short* v. *United States*, No. 102-63 (October 17, 1973), adopted per curiam by the Court of Claims without explanation, will cause unrest throughout the Indian community, and may seriously retard the continued economic, social and political growth of many tribes represented herein. It is the duty of the Association to protect the vital interests of the many Indian reservations and federally recognized Indian tribes in the United States by strongly protesting the decision of the court below, and by respectfully urging this Court to grant the petition of the Hoopa Valley Tribe for a writ of certiorari in order ultimately to reverse said decision.

I. THE DECISION OF THE UNITED STATES COURT OF CLAIMS DIVESTS THE HOOPA INDIANS OF RIGHTS AND INTERESTS WHICH ARE BASED UPON THEIR ABORIGINAL OCCUPANCY OF THE HOOPA VALLEY RESERVATION

The right of the Hoopa Indians to the property and resources of the 12-mile Square portion of the Hoopa Valley Reservation, based upon aboriginal occupancy, is well known within the Indian community. Equally clear has been the United States government's implicit, if not explicit, recognition and approval of those rights.[1] Nev-

[1] For more than a century (*i.e.*, from at least the "Treaty of peace and friendship between the United States government and the Hoopa, South Fork, Redwood, and Grouse Creek Indians" (August, 1864) through the government's defense of Hoopa interests in the instant litigation), the United States Government has protected the Hoopa Indians, and other residents of the Square, in the peaceful and exclusive habitation of the Square and use of its resources. So, too, has the Government protected the exclusive interests of the Yurok Indians, and other non-Yurok residents, in the Hoopa Ex-

ertheless, the decision of the Court of Claims, if affirmed, will effectively wrest control of the reservation from the Hoopa Indians, in favor of a neighboring Indian tribe whose claim to Hoopa property on the Square is tenuous at best. Such deprivation, without just cause, violates a basic tenet of Indian tribal sovereignty, *i.e.*, that original Indian title, which has been transmuted to Executive Order title,[2] is good against all parties (including other Indians), save the federal government.[3] Consequently this decision threatens to diminish the secured nature of Indian property rights by subjecting those rights to untimely and arbitrary divestment.

II. THE COURT OF CLAIMS HAS ERRONEOUSLY ASSUMED THE RESPONSIBILITY OF ESTABLISHING QUALIFICATIONS FOR ENROLLMENT IN THE TRIBAL ENTITY WHICH IS ENTITLED TO SHARE IN THE PROPERTY AND RESOURCES OF THE HOOPA VALLEY RESERVATION

The concepts of Indian self-determination and tribal sovereignty are seriously threatened where the judicial branch of the federal government wrongly assumes the responsibility of determining the membership or enrollment requirements of a tribal entity which is to share in the economic and social resources of an Indian reservation. The opinion of the trial judge, as adopted by the Court of Claims, seems directly contrary to the well established rule that competency for defining tribal enroll-

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tension Reservation and its resources. The history of legislative and executive action in this regard reveals that said policy was based primarily upon the Hoopa's aboriginal occupancy of the Square, the Yurok's aboriginal occupancy of the Extension, and the resolve of the two tribes to risk extinction rather than relinquish their aboriginal homelands.

[2] *Cf. Cabazon Band of Mission Indians* v. *United States*, 21 Ind. Cl. Comm. 119 (1969).

[3] *Spalding* v. *Chandler*, 160 U.S. 394 (1896).

ment for purpose of resolving entitlement to tribal property lies with Congress, or more properly, with the Indian tribe.[4] In accordance with this principle, and well prior to this litigation, the determination of entitlement had been made initially by the tribe, with the encouragement and approval of the Secretary of the Interior, and later confirmed by the Deputy Solicitor in 1958.[5] By rejecting these actions, the Court of Claims has encroached upon the sovereignty of the Indian tribe, challenged the competency of the Congress, and substituted its views for those of the author of the instrument being construed.

The Association urges this Court to reaffirm the principle that the establishment of standards or guidelines for determining membership in a tribal entity, for purposes of economic distribution and social control, is a political and administrative question, within the province of the Indian tribe and legislative branch, and is not a proper subject for judicial experimentation.

CONCLUSION

The Court of Claims decision in the instant suit has profound implications for the entire American Indian community, insofar as it arbitrarily projects one Indian group into a superior and favored position over a neighboring Indian group. Although this matter is complex and fraught with controversy, it is our judgment that abstention by the Supreme Court will only work to sharpen the conflict. For we must not forget that it was the judicial branch of the federal government, through the Court of Claims, which precipitated this confronta-

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[4] *Stephens* v. *Cherokee Nation*, 174 U.S. 445 (1899); *Martinez* v. *Southern Ute Tribe*, 249 F.2d 915 (10th Cir. 1957).

[5] Rights of Indians in the Hoopa Valley Reservation, California, 65 I.D. 59 (1958).

tion 110 years after the fact. Thus, it would seem incumbent upon the highest court in the land to make absolutely certain that any such judicial encroachment upon the lives of American Indians is at least just and correct. A further deterioration of trust between the government and the Indian community, coming as the result of an inequitable and ill conceived decision of a lower court would be most tragic. For these reasons, the Association submits that this matter is one of significant and overriding national importance and is therefore appropriate for Supreme Court review.

The National Tribal Chairmen's Association, as *amicus curiae*, respectfully requests that the petition for a writ of certiorari filed by petitioners, the Hoopa Valley Indians, be granted.

Respectfully submitted,

EDWARD C. BOU
Counsel for Amicus Curiae
1700 K Street, N.W.
Washington, D. C. 20006

CERTIFICATE OF SERVICE

A motion for leave to file a brief *amicus curiae* and a brief *amicus curiae* in support of the Hoopa Valley Tribe of Indians was served this 7 day of February, 1974, by delivering three copies to Jerry C. Straus, Esquire, c/o Wilkinson, Cragun & Barker, 1735 New York Avenue, N.W., Washington, D.C. 20006, counsel for petitioner Hoopa Valley Tribe, and by mailing three copies, first class postage prepaid, to the Solicitor General of the United States, Department of Justice, Washington, D.C. 20530, counsel for respondent United States, and air mail postage prepaid, to Harold C. Faulkner, Esquire, and William C. Wunsch, Esquire, c/o Faulkner, McComish & Wunsch, 351 California Street, San Francisco, California 94104, counsel for respondents Jessie Short, et al.

EDWARD C. BOU
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1700 K Street, N.W.
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SUPREME COURT, U. S

IN THE

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OCTOBER TERM, 1973

No. 73-1104

THE HOOPA VALLEY TRIBE, *Petitioner,*

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MOTION OF NATIONAL CONGRESS OF AMERICAN INDIANS FOR LEAVE TO FILE BRIEF AMICUS IN SUPPORT OF PETITION OF HOOPA VALLEY TRIBE FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

AND

BRIEF OF NATIONAL CONGRESS OF AMERICAN INDIANS IN SUPPORT OF PETITION OF HOOPA VALLEY TRIBE FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

ALBERT J. AHERN, JR.
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IN THE

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OCTOBER TERM, 1973

No. 73-1104

THE HOOPA VALLEY TRIBE,
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MOTION OF NATIONAL CONGRESS OF AMERICAN INDIANS FOR LEAVE TO FILE BRIEF AMICUS IN SUPPORT OF PETITION OF HOOPA VALLEY TRIBE FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

The National Congress of American Indians, Inc. (NCAI), Washington, D. C., respectfully moves for leave to file the attached brief, as *amicus curiae*, in support of the petition of the Hoopa Valley Tribe of Indians for a writ of certiorari in the above entitled cause.

The decision of the United States Court of Claims in *Short* v. *United States*, No. 102-63 (Oct. 17, 1973) threatens to impair the right of self-government of mem-

ber tribes of NCAI. For this reason, your *amicus* respectfully requests this Court to grant this motion.

Respectfully submitted,

ALBERT J. AHERN, JR.
5205 Leesburg Pike
Baileys Crossroads, Va. 22041

Attorney for Amicus Curiae

IN THE

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OCTOBER TERM, 1973

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THE HOOPA VALLEY TRIBE,
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JESSIE SHORT, ET AL., and THE UNITED STATES,
Respondents.

BRIEF OF NATIONAL CONGRESS OF AMERICAN INDIANS IN SUPPORT OF PETITION OF HOOPA VALLEY TRIBE FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

The National Congress of American Indians, Inc. (NCAI), is a nonprofit association of 90 Indian tribes. Its purpose is to promote the interests of American Indians. It was incorporated in Oklahoma in 1954, and its national headquarters is at 1346 Connecticut Avenue, N.W., Washington, D.C.

The Indian tribes of this country still retain and more than ever cherish their natural right of self-government,

though this right is subject to the plenary power of Congress to limit or terminate. When the right of self-government of an important and historic tribe—one that has been in a state of peace and friendship with the United States since the Executive Treaty of 1864—is abrogated not by the Legislative Branch but by the Judicial Branch, *every* tribe fears that its precious right of self-government will be subject to the varying opinions of the various courts.

A judicial decision terminating a tribe's right of self-government is so alarming to the Indian tribes of this country, especially when handed down in a mere suit for damages against the United States, and especially when the decision is affirmed by the Court of Claims without even an opinion, that this Court should not allow it to enter the history books without more. The importance of such a decision to the very existence of the Indian tribes of this country urgently commends that it be made by this Court.

Respectfully submitted,

ALBERT J. AHERN, JR.
5205 Leesburg Pike
Baileys Crossroads, Va. 22041

Attorney for Amicus Curiae

CERTIFICATE OF SERVICE

Motion for leave to file and brief *amicus curiae* served this 7th day of February, 1974, by delivering three copies to Jerry C. Straus, Esq., c/o Wilkinson, Cragun & Barker, 1735 New York Avenue, N.W., Washington, D.C. 20006, attorney for petitioner Hoopa Valley Tribe, and by mailing three copies first class, postage pre-paid, to the Solicitor General of the United States, Department of Justice, Washington, D.C. 20530, attorney for respondent United States, and air mail, postage pre-paid, to Harold C. Faulkner, Esq., and William C. Wunsch, Esq., c/o Faulkner, McComish & Wunsch, 351 California Street, San Francisco, California 94104, attorneys for respondents Jessie Short, et al.

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On Petition for Writ of Certiorari to the United States Court of Claims

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MOTION FOR LEAVE TO FILE BRIEFS AMICUS CURIAE

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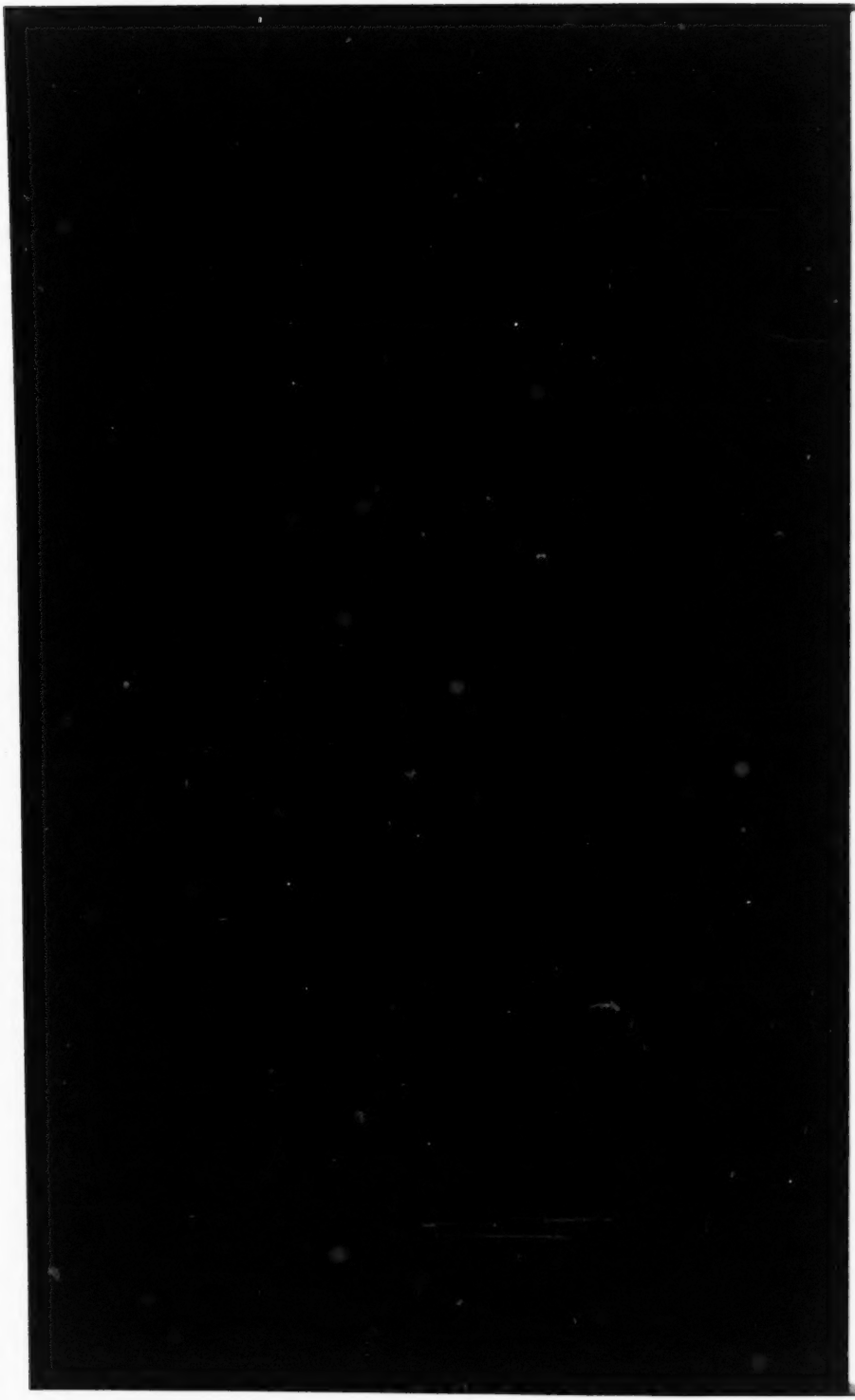

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On Petition for Writ of Certiorari to the United States Court of Claims

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MOTION FOR LEAVE TO FILE BRIEFS AMICUS CURIAE

The Colorado River Indian Tribes (hereinafter the "Tribes") respectfully move for leave to file the attached brief amicus curiae in support of the petition for writ of certiorari to the United States Court of Claims in this case, and for leave to file a brief amicus curiae upon the merits if the petition for writ of certiorari is granted.

Counsel for petitioner has requested that the Tribes file briefs amicus curiae. The consents of the respondents to the filing of briefs have not been sought due to the shortness of time available, hence this motion is filed.

The Tribes are Indians organized under the Indian Reorganization Act of June 18, 1934 (48 Stat. 984, 25 U.S.C. Sections 461-470), specifically Section 16 thereof (25 U.S.C., Section 476). They occupy the Colorado River Reservation, an Indian reservation established pursuant to Acts of Congress and Executive Orders, and they have the beneficial owernship of real property interests in that Reservation. Act of Congress of April 30, 1964, P.L. 88-302 (78 Stat. 188). Their Reservation is adjacent to the Colorado River, lying principally in Arizona but partially in California. It initially was created pursuant to Act of Congress of March 3, 1865 (13 Stat. 559) " . . . for the Indians of said river and its tributaries." Most of the present members of the Tribes trace their ancestry to different aboriginal tribes which historically lived along or near the Colorado River, rather than to a single tribe. These factors appear to be similar to some of the circumstances pertinent to the Hoopas and Yuroks and which are the subject of the litigation.

The interest of the Tribes, which undoubtedly is shared by many other reservation Indians, is in obtaining from this Court a clarification of the rights of organized Indian Tribes, and their members residing upon reservations, both

as to determination and qualification of tribal membership and as to participation in the benefits and proceeds of their reservation. There are aspects of the findings and opinions of the trial judge, as adopted by the Court of Claims, which place these matters in doubt, and which may be contrary to established law concerning the rights of Indians. Furthermore, the decision below seems particularly susceptible to incorrect application in other situations to deprive organized Indian tribes and their members of their tribal integrity and autonomy, and their opportunity to realize political and economic self-sufficiency, contrary to law and national policy. The Tribes urge this Court to grant the petition so that these matters of great importance to American Indians may receive a full, authoritative consideration and resolution.

Although it is expected that the parties to the instant litigation will adequately present the specific facts or questions of law which are necessary for the resolution of this particular case, its ramifications, and interpretations both correctly and erroneously made, can have grave consequences for other tribes throughout the United States. The Tribes believe that these broader aspects may not be adequately presented or defined

and distinguished by the parties and that the contribution of amicus curiae may be beneficial.

Respectfully submitted,

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Dated: February 7, 1974

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UNITED STATES, *Respondents*.

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to the United States Court of Claims

BRIEF OF AMICUS CURIAE, COLORADO RIVER INDIAN TRIBES

The interest of the Tribes in clarification and resolution of questions and issues raised by the decision of the Court of Claims, by its adoption of the findings and opinion of the trial judge, is set forth in the preceding motion. Although the Tribes have no involvement in the specific controversy between the Hoopa Valley Tribe and the Yuroks, and the United States, there are matters of

law in the case which may have application, or be misapplied, to the Tribes and to other Indian tribes. They need to be clarified, and unique factual and legal aspects which may be determinative of the instant case need to be identified as such and expressly limited to this case.

It is now recognized that American Indians have never constituted a single culture or society, but rather they belong to or have descended from numerous, unrelated tribes. The tribes have distinct traditions, relationships and ways of life. Strong identification with and allegiance to his tribe is a characteristic of the American Indian.

Indian reservations were established by the United States by various means, but invariably for particular or identifiable tribes, as contrasted to creation of them for Indians generally. A tribe and its reservation, historically and as a matter of public policy and law, must be considered together -- the reservation being the land base of the tribe. To fulfill the purpose of the creation of a reservation, the benefits and proceeds of it should inure to the tribe and its members who are dependent upon it for maintenance of their tribe as a viable political, economic, and cultural entity.

It is the national law and policy to encourage and assist Indians to preserve their unique cultures and to fully realize self-sufficiency and self-determination through their tribal organizations. See e.g., Title 25 U.S.C. Sections 476, 467, and 461; President's Indian Message to the Congress, July 8, 1970. If, as a general matter of law, individuals, even though of Indian blood, who are not members of the only tribal organization on a reservation, and who may be non-residents of the reservation, and who do not participate in the culture or organization of the tribe, nevertheless are permitted to draw heavily from the assets of the reservation, then that tribe may be incapable of functional survival except by governmental gratuities.

The question of jurisdiction and responsibility for determining tribal membership, particularly for purposes of distribution of tribal assets, which is the subject of the third reason set forth in the brief of petitioner for granting the writ of certiorari, needs to be considered by this Court because of the possible impact of the decision below upon Indians elsewhere. Entitlement to participate in the financial benefits of tribal membership, which benefits have been so long delayed in American history, is a matter of crucial moment to American Indians. To avoid a potential generalized basis for a new form of unjust en-

richment and distribution to counterparts of "laughing heirs" of other tribes, the Court is requested to grant the writ so that this matter may be considered.

Respectfully submitted,

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Of Counsel:

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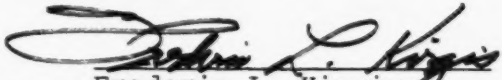
Dated: February 7, 1974

CERTIFICATE OF SERVICE

This is to certify that I have this date served the attached Motion for Leave to File Briefs Amicus Curiae and Brief of Amicus Curiae on the Hoopa Valley Tribe, Jessie Short, and the United States, by mailing three copies of the same, air-mail, postage prepaid, to each of their respective counsel of record, Jerry C. Straus, Esq., Wilkinson, Cragun & Barker, 1735 New York Avenue, N.W., Washington, D. C., 20006; Harold C. Faulkner and William C. Wunsch, Faulkner, McComish & Wunsch, 351 California Street, San Francisco, California, 94104; and the Solicitor General, Department of Justice, Washington, D. C., 20530. All parties required to be served have thus been served.



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February 7, 1974

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IN THE

Supreme Court of the United States

October Term, 1973
No. 73-1104

THE HOOPA VALLEY TRIBE,
Petitioners,
v.
JESSIE SHORT, *et al.*, and THE UNITED STATES,
Respondents.

MOTION OF THE COLVILLE CONFEDERATED TRIBES OF THE COLVILLE INDIAN RESERVATION, WASHINGTON, FOR LEAVE TO FILE STATEMENT AMICI CURIAE IN SUPPORT OF PETITION OF HOOPA VALLEY TRIBE OF INDIANS FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

AND

STATEMENT OF THE COLVILLE CONFEDERATED TRIBES OF THE COLVILLE INDIAN RESERVATION, WASHINGTON, IN SUPPORT OF PETITION OF HOOPA VALLEY TRIBE OF INDIANS FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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The Colville Confederated Tribes of the Colville Indian Reservation, Washington, respectfully move for leave to file, as *amici curiae* the accompanying statement in support

of the petition of the Hoopa Valley Tribe of Indians (No. 73-1104, filed January 14, 1974) for a writ of certiorari to the United States Court of Claims.

The Colville Tribes state, in support of this motion, that the holding of the Court of Claims in *Short v. United States*, No. 102-63 (Oct. 17, 1973) is erroneous, with respect to the question of tribal enrollment for purposes of allocating proportionate shares of the resources of the Hoopa Valley Reservation; and that the holding is potentially damaging to all organized, federally-recognized tribal entities and, in particular, to the Colville Confederated Tribes of the Colville Indian Reservation.

In the interest of justice, the Colville Confederated Tribes respectfully request that the Court grant this motion.

STATEMENT OF THE COLVILLE CONFEDERATED TRIBES OF THE COLVILLE INDIAN RESERVATION, WASHINGTON, IN SUPPORT OF PETITION OF HOOPA VALLEY TRIBE OF INDIANS FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

I.

STATEMENT OF INTEREST

The Colville Confederated Tribes of the Colville Indian Reservation, Washington, comprise eleven bands of Indians under a Constitution and Bylaws approved by the Secretary of the Interior on February 26, 1938. Section 2 of Amendment III of the tribal Constitution empowers the Business Council of the Confederated Tribes "to prescribe rules and regulations governing future membership in the tribes, including the adoption of members and loss of membership. . . .", subject to the approval of the Secretary of the Interior.

The power of the tribes to determine enrollment upon the Colville Reservation, with the approval of the Secretary, has been challenged in two cases recently decided by the United States Court of Appeals for the Ninth Circuit. *Thompson v. Tonasket,* No. 72-1193 (9th Cir., Nov. 2, 1973); *Laramie v. Nicholson,* No. 72-1264 (9th Cir., Oct. 9, 1973). Your *amici* intend to petition this Court for writs of certiorari to review the two aforementioned Ninth Circuit decisions.[1]

The decision of the Court of Claims in *Short v. United States,* No. 102-63 (Oct. 17, 1973) bears directly upon the resolution of questions of tribal membership which are presented in *Thompson* and *Laramie.*

II.

THE COURT OF CLAIMS HAS NO SUBJECT MATTER JURISDICTION OVER INDIAN TRIBAL MEMBERSHIP QUESTIONS

The sovereign immunity of an Indian tribe extends to questions of membership or enrollment on an Indian reservation, *Martinez v. Southern Ute Tribe,* 249 F.2d 915, 920 (10th Cir. 1957), especially where individual entitlement to tribal property or resources must be determined. *Stephens v. Cherokee Nation,* 174 U.S. 445 (1899).

The regulation of tribal affairs has been deemed political and administrative in nature, subject to the plenary authority of the legislative branch. *Cherokee Nation v. Hitchcock,* 187 U.S. 294, 308 (1902). Thus, jurisdiction in the federal courts, including the Court of Claims, to

1. On December 11, 1973, Mr. Justice Douglas granted an extension of time to February 20, 1974, in which to file a petition for writs of certiorari in these cases.

entertain membership questions regarding Indian tribes must be expressly conferred by Congress. *Lone Wolf v. Hitchcock*, 187 U.S. 553, 565 (1903).

Congress has not expressly conferred upon the Court of Claims any jurisdiction over tribal enrollment on Indian reservations in general, or on the Hoopa Valley Reservation, California, in particular.

III.

CONCLUSION

The question whether the Court of Claims may enroll Yurok Indians on the Square portion of the Hoopa Valley Reservation over the objections of the Hoopa Valley Tribe of Indians and the Executive branch of government, in violation of the Hoopa Tribe's federally-recognized and approved Constitution and By-Laws, and in conflict with an established body of judicial precedent, is one of great importance for intertribal and intratribal relations, and is therefore appropriate for Supreme Court Review.

The Colville Confederated Tribes of the Colville Reservation respectfully request that the petition of the Hoopa Valley Tribe of Indians for a writ of certiorari to the United States Court of Claims be granted, and that the Court of Claims decision in *Short v. United States*, No. 102-63 (Oct. 17, 1973) be reversed.

Respectfully submitted,

ZIONTZ, PIRTLE, MORISSET
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February 6, 1974